Walkers

Jersey Company Law Series: Buyback / Repurchase of own shares

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KEY TAKEAWAYS

- Statutory requirements
- Solvency statement implications
- Funding and treatment of buybacks

The Companies (Jersey) Law 1991, as amended, (the "Law") gives Jersey companies a considerable degree of flexibility to fund the purchase (buyback) of their own issued shares from any source, including capital.

Buyback of shares

A company can effect a share buyback if:

- the relevant shares are fully paid-up (or credited as fully-paid up);
- the directors who authorise the buyback make a Solvency Statement (as set out below);
- the shareholders pass a special resolution authorising the buyback (unless the company is a wholly owned subsidiary) and an ordinary resolution approving the form of buyback contract to be entered into between the company and the holder of the shares to be repurchased;
- the buyback complies with the relevant provisions of the company's articles of association; and
- after the buyback, the company would have at least one shareholder holding shares other than redeemable shares or treasury shares.

Are the shares listed?

If a company's shares are to be repurchased on a stock exchange, the special resolution approving the buyback must state:

- the maximum number of shares to be purchased;

- the minimum and maximum prices to be paid; and
- the date on which the authority for the buyback will expire (which cannot be more than five years from the date of the special resolution).

If a company's shares are not listed on a stock exchange:

- the shares can only be purchased pursuant to a contract approved in advance by an ordinary;
- resolution of the shareholder(s) (as above); and
- the shares to be repurchased cannot vote on either the special resolution or the ordinary resolution.

The Solvency Statement

The directors who authorise the buyback must make a statement (a "**Solvency Statement**") that they have formed the opinion that:

- immediately following the date of the buyback, the company will be able to discharge its liabilities as they fall due; and
- having regard to (i) the prospects of the company and to the intentions of the directors with respect to the management of the company's business and (ii) the amount and character of the financial resources that will in their view be available to the company, the company will be able to:
- continue to carry on business; and
- discharge its liabilities as they fall due,

until the first to occur of the expiry of the period of 12 months immediately following the date of the buyback, or the company is wound up on a solvent basis.

A director who makes a Solvency Statement without having reasonable grounds for the opinion expressed in it is guilty of an offence and, upon conviction, is liable to a fine, imprisonment for up to two years or both.

Funding a buyback

A buyback can be funded from any source, including from a nominal capital account or share premium account (for a par value company) or a stated capital account (for a no par value company).

The consideration for the buyback can be paid in cash, other assets or a combination of the two.

Treatment of buyback shares

Shares that are repurchased are automatically cancelled, unless the company authorises the holding of such shares as treasury shares by ordinary resolution and is not prohibited, by its memorandum or articles of association, from holding such shares as treasury shares.